and true." Then again, in this country at least, the opinion of the whole court is, as a rule, written by one of its members, whereas the jurors are required to state their conclusions *seriatim*. Whatever be the explanation, the usage is as Chief Justice Blake has found it, and though not a subject of great weight as a matter of law, it is still interesting as a legal curio.

THE TILDEN WILL CASE. — The final decision of the famous Tilden will case in the New York Court of Appeals is suggestive, not only as an addition to the list of bad wills of well-known lawyers, but also as emphasizing one of the weaknesses of the New York law. Mr. Tilden left the bulk of his property to his executors, in trust to turn it over to the Tilden Trust, an institution to be incorporated for the purpose of building a free library, and for such other educational and scientific purposes as they thought best. The amount to be given to the Tilden Trust was in the discretion of the executors, and the giving of any depended on their approval of the corporation when formed.

The court refuses to find a trust, for lack of a certain beneficiary. It is not denied that a valid bequest may be made to a corporation to be created after the death of the testator; but the rights of the corporation must begin at once on its creation; it is the discretion in the executors here that invalidates the trust. New York knows nothing of the *cy-près* doctrine, which elsewhere upholds charitable bequests when no beneficiary is named.

Three kindly judges out of seven manage to dissent on the ground that the section giving to the executors power to give to general purposes, should they fail to approve the Tilden Trust, is void, and that therefore the former section stands as a valid trust. This ground of construction does not, of course, touch the general question of law.

Besides the obvious slur the facts of this case throw on the general policy of discarding the *cy-près* doctrine, they give an opportunity to deplore the fact that what might be called the *laissez-faire* doctrine is not more widely applied in cases of attempted trusts. The property is given to the executors. The equitable rights of the next of kin, like all constructive trusts, rest purely on ideas of natural justice, and it certainly seems as though the interference of equity to set aside the legal title is uncalled for, except when the failure of the testator's object gives the next of kin a right in justice to complain. When the donees, as in this case, are willing to fulfil the testator's wishes, it seems as though equity, in interfering to prevent their action, is converting a regulating principle which depends for its life solely on natural justice into a positive rule having no defence either in policy or in principle. Such, however, seems to be the general law.

JUSTIFIABLE HOMICIDE — KILLING A THIEF. — The defendant in a recent Texas case hired a seeming tramp, so his own testimony runs, to help him gather a crop. The conversation and conduct of the new acquisition soon suggested to the master the probability that his servant was a horse-thief; whereupon he determined, on the night of the expected transaction, to keep watch with a double-action pistol.

An hour after the watch began a man appeared, leading one of the defendant's mares from the pasture. When the defendant shouted to the thief to "hold up," the latter slipped the halter from the animal's